

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

MICHAEL K. BURDEN,
6621 A Pilot Ave.
Norfolk, Va. 23513
(757) 376-4931

Plaintiff,

vs.

Civil Action, FileNumber 2:10cv345

SYR Inc. Management Services,
795 Monticello Ave.
Norfolk, Va. 23510
(757) 627-0550

Defendant.

COMPLAINT

1. On December 11, 2008 I, Michael K. Burden filed charges of Retaliation Discrimination and Disability Discrimination against SYR Inc. Management Services with the U. S. Equal Employment Opportunity Commission (Exhibit A) Charge No. 437-2009-00289. In May 2010 I received a letter dated April 28, 2010 from the U.S. Equal Employment Opportunity Commission's Deputy District Director Carlos Rivera Villescascas (Exhibit B) concluding the processing of my complaint, and I received a DISMISSAL AND NOTICE OF RIGHT to SUE letter (Exhibit C) from the District Director Reuben Daniels, Jr. on the behalf of the Commission. I received a letter dated June 17, 2010 (Exhibit D) from Director Herbert Brown of the Norfolk's EEOC stating that " The Dismissal and Notice of rights to Sue issued on April 28, 2010, includes both your disability and retaliation claims". Title VII of the Civil Rights Act and the Americans with Disabilities Act under federal law gives me the right to file this Lawsuit based on the charges under Charge No. 437-2009-00289 the U.S. Equal Employment Opportunity Commission dismissed.
2. On November 28, 2008 the plaintiff injured his back at work, plaintiff was taken to Sentara Norfolk General's Emergency Room by ambulance and the E.R. Doctor treated plaintiff's injury. The plaintiff's employer filed an Employer's Accident Report (Exhibit E) for Mr. Burden, which is required by the Virginia Workers' Compensation Act and named National Union Fire Insurance Company as Insurer.
3. Later that night on November 28, 2008 plaintiff went to the Veteran Administrations Hospital's E.R. and was given a slip to return to work (Exhibit F) on December 2, 2008. On November 29, 2008 plaintiff was in servere pain and returned to Sentara Norfolk's E.R. Plaintiff was treated by the E.R. Doctor (Exhibit G) who gave him a shot of pain medication, and told plaintiff that if he had futher problems to go to his personal Doctor. On December 1, 2008 plaintiff went to the Veterans Hospital and was re-examined by a Nurse Practitioner who gave plaintiff a return to work and light duty paper (Exhibit H) dated December 1, 2008 for him to report back to work on December 12, 2008. All doctor notes and return to work slips plaintiff received before Dec

1st were given to the Employer before December 1st, and the Veterans doctor slip dated December 1, 2008 were given to the employer on December 1, 2008.

4. Plaintiff called his supervisor Ms. Prichett on December 9, 2008 and told Ms. Prichett that he was returning to work as scheduled on December 12, 2008. Approximately 15 minutes after plaintiff talked to his supervisor, the supervisor called plaintiff back and told plaintiff that he was terminated. The Employer eventually told plaintiff that he abandon his job (Exhibit I), when he failed to work on Wednesday December 3, 2008, on Thursday December 4, 2008, and on Saturday December 6, 2008. SYR Inc. the Employer has failed to present evidence to support their claim that plaintiff was required to call in each day when an employee is out on sick leave due to sustaining an on the job injury; the Employer has failed to present evidence that the plaintiff in anyway deliberately relinquished his position. Absenteeism, attributable to illness or injury does not constitute misconduct when the Employer has been properly notified.

Wherefore plaintiff demands:

(1) That plaintiff have judgement against defendant SYR Inc. Management Services for Discrimination based on Retaliation and Disability; (2) that plaintiff have judgement against defendant SYR Inc. Management Services for One Hundred Thousand Dollars; (3) that plaintiff have judgement against defendant for costs.

Michael K. Burden

Address of Plaintiff:

Michael K. Burden
6621 A Pilot Ave.
Norfolk, Va. 23513

Address of Defendant:

SYR Inc. Management Services
795 Monticello Ave.
Norfolk, Va. 23510

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

437-2009-00289

Virginia Council On Human Rights

and EEOC

Name (indicate Mr., Ms., Mrs.)

Mr. Michael K. Burden

Home Phone (incl. Area Code)

(757) 581-1454

Date of Birth

04-07-1956

Street Address

City, State and ZIP Code

3224 Flanders Avenue, Apartment A, Norfolk, VA 23509

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

SYR INC. MANAGEMENT SERVICES

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(757) 627-0550

Street Address

City, State and ZIP Code

795 Monticello Avenue, Norfolk, VA 23510

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

12-09-2008**12-09-2008**
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

- I. On November 28, 2008, I sustained an injury on the job and was transported to the emergency room where the doctor told me to take off work for a couple of days until I saw my primary doctor. On December 1, 2008, my primary doctor took me out of work for two weeks. I notified the company of this request and on December 9, 2008, I was discharged. I had been employed with this company since April 2002 and my position was Truck Driver.
- II. No reason was given for terminating my employment.
- III. I believe I have been discriminated and retaliated against in being discharged for sustaining an on the job injury in violation of the Americans with Disabilities Act of 1990, as amended, Section 107 of Title I, and the Virginia Human Rights Act, VA Code 2.2-3900B et seq.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

12-11-08

Date

Charging Party Signature



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Charlotte District Office

129 West Trade Street, Suite 400
Charlotte, NC 28202
Intake Information Group: 800-669-4000
Intake Information Group TTY: 800-669-6820
Direct Dial: (704) 954-6423
TTY (704) 344-6684
FAX (704) 954-6410
Website: www.eeoc.gov

April 28, 2010

Mr. Michael K. Burden
3224 Flanders Ave. Apt. A
Norfolk, VA 23509

Michael Flanders vs. SYR INC.
Charge No. 437-2009-00289

Dear Mr. Burden:

This letter is to advise you that the Commission is concluding the processing of the referenced charges of discrimination which you filed against your former employer.

The evidence of record gathered in your charge does not support the allegation that you were subjected to disability discrimination by the Respondent officials. Your allegation did not involve a disability as defined by the Americans With Disabilities Act. Given the short duration of your injury you are not considered to be a qualified individual with a disability.

Enclosed you will find a DISMISSAL AND NOTICE OF RIGHT to SUE and, an Information Sheet which describes your right to pursue this matter in court by filing a lawsuit within 90 days of your receipt of the dismissal notice. Please be aware that the 90-day period for filing a lawsuit cannot be waived, extended or restored by the EEOC once it expires.

Sincerely,

A handwritten signature in black ink, appearing to read "Carlos Rivera Villegas".

Carlos Rivera Villegas
Deputy District Director

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Michael K. Burden**
6621a Pilot Avenue
Norfolk, VA 23513

From: **Charlotte District Office**
129 W. Trade Street
Suite 400
Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
~~CONFIDENTIAL (29 CFR §1601.7(a))~~

EEOC Charge No.

EEOC Representative

Telephone No.

Carlos Villegas,
Deputy Director

437-2009-00289

(704) 344-6736

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On Behalf of the Commission

Reuben Daniels, Jr.,
District Director

Enclosures(s)

(Date Mailed)

April 28, 2010

cc: **SYR INC. MANAGEMENT SERVICES**
795 Monticello Avenue
Norfolk, VA 23510

Exhibit D



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Norfolk Local Office**

Federal Building
200 Granby St., 7th Floor, Suite 739
Norfolk, VA 23510
(757) 441-3706
TTY (757) 441-3578
FAX (757) 441-6720
EEOC Web Site: www.eeoc.gov

June 17, 2010

Michael K. Burden
6621a Pilot Ave.
Norfolk, VA 23513

Re: ~~Michael K. Burden~~
Vs.
SYR Inc. Management Services
Charge No.: 437-2009-00289

Dear Mr. Burden:

This is in response to your inquiry regarding your retaliation charge. My review of your case did not uncover any evidence that you protested any laws or participated in any investigation that the Commission is responsible for enforcing and/or conducting.

The Dismissal and Notice of Rights to Sue issued on April 28, 2010, includes both your disability and retaliation claims. Should you have any additional questions, please contact me at (757) 441-6669.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert Brown", is written above the printed name.

Herbert Brown
Director

Exhibit E

Employer's Accident Report
(formerly: Employer's First Report of Accident)
Virginia Workers' Compensation Commission
1000 DMV Drive Richmond VA 23220
See instructions on the reverse of this form

The boxes to the right are for the use of the insurer	Reason for filing	VWC file number
	Insurer code or PEO Ref. No.	Insurer location
	Insurer claim number	



Employer	
1. Name of employer (trading as or doing business as, if applicable) SYR, INC.	2. Federal Tax Identification Number 541413478
3. Employer's Case No. (if applicable)	
4. Mailing address 795 MONTICELLO AVENUE NORFOLK VA 23510	5. Location (if different from mailing address)
6. Parent corporation/Policy Named Insured (if applicable) or PEO name	7. Nature of business (NAICS code, if applicable) RETAIL
8. Name and Address of Insurer or self-insurer for this claim National Union Fire Insurance Company 70 Pine Street New York NY 10270	9. Policy number 006967578
	10. Effective date 07/01/2008
Time and Place of Accident	
11. City or county where accident occurred NORFOLK	12. Date of injury 11/28/2008
13. Hour of injury 12:00 a.m. <input type="checkbox"/> p.m. <input checked="" type="checkbox"/>	14. Date of incapacity
13a. Time began work 11:00 a.m. <input checked="" type="checkbox"/> p.m. <input type="checkbox"/>	15. Hour of incapacity
16. Was employee paid in full for day of injury? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	17. Was employee paid in full for day incapacity began? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
18. Date injury or illness reported 11/28/2008	19. Person to whom reported GLENDDORA PRICHETT
20. Name of other witness	21. If fatal, give date of death
Employee	
22. Name of employee (Last, First, Middle) BURDEN, MICHAEL	23. Phone number 757 5811454
24. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	25. Address 3224 FLANDER AVENUE NORFOLK VA 23518
26. Date of birth 04/07/1956	27. Marital status <input checked="" type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widowed
28. Social security number 227-78-4798	29. Occupation at time of injury or illness (SOC code, if applicable) CASHIER/SALESFLOOR
30. Is worker covered by PEO policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	31. Number of dependent children 0
32. How long in current job? 02 Years 04 Months	33. Date of Hire 02 Years 04 Months
34. Was employee paid on a piece work or hourly basis? <input type="checkbox"/> Piece work <input checked="" type="checkbox"/> Hourly	35. Hours worked per day 5.00
36. Days worked per week 5	37. Value of perquisites per week Food/meals Lodging Tips Other
38. Wages per hour \$ 12.25	39. Earnings per week (inc. overtime) \$ 428.75
Nature and Cause of Accident	
40. Machine, tool, or object causing injury or illness 19 Inch tv, unknown	41. Specify part of machine, etc.
42. Describe fully how injury or illness occurred Unknown, ee was found on the floor	
43. Describe nature of injury or illness, including parts of body affected Nature of Injury: UNKNOWN Part of Body: UNKNOWN	43a. Overnight inpatient hospitalization? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 43b. Treated in Emergency Room? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
44. Physician (name and address) WILLIAM D ALLEY RES 600 GRESHAM DRIVE NORFOLK VA 23507	45. Hospital or Clinic (name and address) SENTARA NORFOLK GEN 600 GRESHAM DRIVE NORFOLK VA 23510
46. Probable length of disability Years Months	47. Has employee returned to work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
48. At what wage? 12.25	49. On what date? 11/29/2008
50. EMPLOYER: prepared by (name, signature, title) HOPE WHITING ADMIN ASSISTANT	51. Date 11/28/2008
52. Phone number 757 6270550	53. INSURER: (name of processor) National Union Fire Insurance Company
54. Date	55. Phone number (212) 770-7000
56. THIRD PARTY ADMINISTRATOR (if applicable)	57. Address
	58. Phone number

This report is required by the Virginia Workers' Compensation Act

Employer's Accident Report
VWC Form No. 3 (rev. 03/22/02)

Exhibit F
 Burden, Michael was seen
 at Va. E.O - Return to work
 Tuesday, Dec. 2.

Imprint from Patient Data Card or type or print name, ident. no., name of facility visited

PURPOSE	HOSPITALIZATION		OUTPATIENT SERVICE	
	DATE		DATE AND HOUR	
	FROM	TO	REPORTED	DEPARTED
<i>I certify that the above-named veteran visited this facility on the date and for the purpose as indicated.</i>				
SIGNATURE OF CHIEF, MEDICAL ADMINISTRATION SERVICE DESIGNEE			DATE	
				

VA FORM 10-2382 MAY 1999 (R) GPO U.S. GOVERNMENT PRINTING OFFICE: 2007-330-873/98744

Exhibit G

Sentara Bayside Hospital Emergency Department 803-6137
 Sentara Careplex Hospital Emergency Department 756-2010
 Sentara Leigh Hospital Emergency Department 261-6034
 Sentara Norfolk General Hospital Emergency Department 833-6256
 Sentara Virginia Beach General Hospital Emergency Department 305-8890
 Sentara Williamsburg Regional Hospital Emergency Department 757-984-7153
 Sentara Port Warwick Hospital Emergency Department 757-594-1920
 Sentara Princess Anne Hospital Emergency Department 757-507-0010

REPORT OF VISIT FORM

DATE: 11/29/08

TIME IN: _____

TIME OUT: 0535

TREATMENT ADMINISTERED:

- ☒ Initial Visit
☐ Follow up.

- ☐ Medication/Administration/Prescribed
☐ Narcotics/Administration/Prescribed

DISPOSITION:

- ☐ Admitted
☐ No follow-up required
☐ Referred to physician panel: _____
☐ Follow up with: _____

☒ Discharged

WORK/SCHOOL STATUS:

- ☒ Return to regular school/work
☐ Return to modified work

Date: 11/30/08

Date: _____

MODIFIED WORK AS INDICATED BELOW:

- ☐ No prolonged sitting, standing, or walking
☐ No climbing, bending, or stooping
☐ Weight lifting restriction of _____ pounds
☐ Limited use of right hand ☐ Limited use of left hand
☐ Judgement or reflexes may be impaired because of injury/medication. No
 ating or proximity to dangerous machinery/environment. (example: avoid
 erous heights, operation of forklift or motor vehicle)
 Other: No driving while taking vicodin

- ☐ Unable to return to work/school for _____ days.
☐ No physical education for _____ days.

Mendelson

MID/NP/PA

BURDEN, MICHAEL KEITH
 04/07/1956 N 52Y M
 50730113-8334 227784798



Sentara Norfolk General Emergency Department
 600 Gresham Drive
 Norfolk, VA, 23507
 Phone: 757-388-3296

Burden, Michael Keith (50730113)

Visit on: 11/29/08

The Sentara Emergency Department would like to thank you for allowing us to assist you with your healthcare needs. The following includes patient education materials and information regarding your injury or illness.

1. The examination and treatment you have received in the Emergency Department has been rendered on an emergency basis. It is important that you notify your physician of new or continuing problems, since it is impossible to recognize and treat all elements of an injury or illness in a single Emergency Department visit.
2. Follow-up care, continued treatment, rechecks and/or additional medications are to be provided by your private physician.
3. Call your doctor or return to the Emergency Department if you feel worse or you feel no better in 48 hours.
4. X-ray and EKG readings are emergency readings only and final interpretations will be made by a Radiologist or Cardiologist.
5. I authorize Sentara Hospitals to release a copy of my Emergency Treatment Record to my physician for follow-up care.
6. Call 1-800-SENTARA for assistance and information regarding physician referrals.

"None"

Follow-up With	Details	Comments	Contact Info
Primary/Work Comp MD	Call in 2 days		

Discharge Attachments

- Back Pain

Department of Veterans Affairs
100 Emancipation Drive
Hampton, Virginia 23667

DEC 01, 2008

MICHAEL K BURDEN
3224 FLANDERS AVE
APT A
NORFOLK, VIRGINIA 23509

This transmission is intended for the use of the person to whom it is addressed and may contain information that is privileged, confidential, or protected by law.

All others are hereby notified that receipt of this message does not waive any applicable privilege or exemption from disclosure and that any dissemination, distribution, or copying of this communication is prohibited.

If you received this communication in error, please notify the Facility Privacy Officer.

If you need medical attention or have questions regarding this letter prior to your next primary care appointment, you may contact the telecare nurses at 757-726-6060 or toll free at 1-888-869-6060.

Dear Mr. BURDEN

Based on condition of your lumbar spine and the recent injury (11/26/08); it is necessary for you to be off work for two week, then return to light duty; no lifting or prolonged standing until cleared by medical.

Sincerely,

Jane Johndrow, ANP-BC
Nurse Practitioner



It is very important that you keep all future appointments. Please call the Clinic at 757-722-9961, ext. 2777 if you have any concerns regarding the next step in your evaluation.

To make an appointment (Central Scheduling)
To reschedule an appointment (Central Scheduling)

(757) 728-3188
(757) 728-7004

Future Appointments

JAN 12, 2009@13:30

PRIM CARE D KAPOOR

EXHIBIT I

OFFICE

8:33

EMPLOYEE OUTPROCESSING SEPERATION FORM

Name of employee being seperated:

Burden
Last NameMichael
First Name

M.I.

Social Security Number _____ Employee I.D. # _____

Job Title Cashier Ending Rate of Pay \$ 12.25Last Day Worked 11/29/08 Date Terminated 12/9/08On-site Uniforms, Keys, and Equipment turned-in N/A Yes _____ No (If no, describe items in detail in Remarks Section.)

Reason for seperation (Check applicable line below and then explain fully.)

☒ Left Work of Own Accord _____ Discharged _____ Layed Off _____

Remarks Section: Michael Burden was scheduled to work
Wed Dec 3rd - 1-6³⁰-, Thurs. Dec 4th - 12-6³⁰ Sat Dec 6th
We havent heard from Michael Burden, Mike has 11-6³⁰.
Continuously broken Syr Inc. policies by not contacting
his Supervisor. Mike has abended his job

Employee Remarks (Optional) _____

Supervisors Signature JR Prichett Date 12/9/08

Employee's Signature _____ Date _____